

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MASSACHUSETTS
CENTRAL DIVISION**

In re

**TOP LINE GRANITE DESIGN, INC.,
Debtor**

**Chapter 7
Case No. 22-40216-EDK**

**MOTION OF CHAPTER 7 TRUSTEE FOR APPROVAL OF
COMPROMISE WITH JOHN V. TESTA**

NOW COMES Steven Weiss, Chapter 7 Trustee (the “Trustee”), and requests that this Court enter an order approving a compromise with John V. Testa, Individually, d/b/a Kitchen Concepts, and as Trustee of the John V. Testa Revocable Trust (collectively, “Testa”) concerning an adversary proceeding filed by the Trustee, pursuant to Federal Rule of Bankruptcy Procedure 9019 and MLBR 9019-1. In support thereof, the Trustee respectfully states as follows:

1. On March 25, 2022 (the “Petition Date”), Top Line Granite Design, Inc. (the “Debtor”) filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code with this Court. The Trustee was appointed as Subchapter 11 Trustee.
2. On June 29, 2023, the case was converted to Chapter 7, and the Trustee now serves as Chapter 7 Trustee.
3. The matters set forth herein constitute core proceedings, pursuant to 28 U.S.C. § 157(b)(2)(A) and (B).
4. The Trustee has investigated the Debtor’s financial transactions. Among those transactions are multiple transfers between Testa and the Debtor. Some of these transfers are

detailed in the Trustee's Status Report [ECF No. 203, the "Status Report"], filed by the Trustee while the case was still in Chapter 11. As set forth therein, and based on the records then available to the Trustee, there were payments from the Debtor to Testa of approximately \$1,052,000 during the preference period, offset by advances by Testa to the Debtor of at least \$843,500.00. As is further set forth in the Status Report, the documentation for the loan is sparse, essentially consisting of one promissory note for \$542,000, executed by both the Debtor and Edmilson Ramos, as guarantor.

5. On December 23, 2023 the Trustee filed an adversary proceeding against Testa (Case No. 23-4035, referred to herein as the "Complaint"). As set forth in more detail therein, the Trustee contends that transfers to Testa constituted voidable preferential or fraudulent transfers, and that the interest rate charged violated the Massachusetts usury statute, M.G.L. Ch. 271, § 49, and therefore violated M.G.L. Ch. 93A.

6. The Trustee has since conducted extensive discovery in the matter. He has obtained Testa's bank statements and records concerning the payments to and from the Debtor, which have been reviewed by the Trustee's accountants. The Trustee has also taken the deposition of Edmilson Ramos ("Ramos"), the principal of the Debtor.

7. The Trustee's investigations reveal that the lending relationship between the Debtor and Testa began over a decade before the Petition Date; that the amounts owed by the Debtor to Testa over the duration of that period exceed \$3,618,000; that during the year before the Petition Date the advances by Testa to the Debtor exceeded the payments from the Debtor to Testa by more than \$2,000,000; and that during the 90 day preference period the advances by Testa to the Debtor exceeded the payments to Testa by over \$800,000. The Trustee also investigated why Testa was

not listed as a creditor in the Debtor's schedules; Ramos testified that the advances were made in order to assist the Debtor in addressing its chronic cash flow problems; he considered the Debtor to be obligated to Testa, and Testa should have been listed as a (large) creditor. And, in any event, it appears Testa's advances were made to the Debtor for business purposes.

8. Following the discovery process, the Trustee has negotiated the following settlement, subject to approval by this Court: (a) Testa will pay the sum of \$60,000.00 (the "Settlement Payment") to the Trustee in full satisfaction of the estate's potential claims against Testa; (b) payment will be due fifteen (15) days after an order approving this motion becomes final; (c) upon receipt of the Settlement Payment, the parties will file a stipulation of dismissal of the Complaint, with prejudice and without costs; and (d) Testa agrees not to file or pursue any claim in the Debtor's bankruptcy case. The settlement agreement is annexed hereto as Exhibit "A".

9. In evaluating a settlement for the estate, a bankruptcy court should "assess and balance the value of the claim that is being compromised against the value to the estate of the acceptance of the compromise proposal." *Jeffrey v. Desmond*, 70 F.3d 183, 185, quoting *In re GHR Cos.*, 50 B.R. 931 (Bankr. D. Mass. 1985). A Trustee's judgment concerning the justifications for a settlement is ordinarily provided some deference. *Hill v. Burdick (In re Moorhead Corp.)*, 208 B.R. 87 (1st Cir. 1997); *In re FiberCore, Inc.*, 391 B.R. 647 (Bankr. D. Mass. 2008) (citations omitted).

10. The Trustee believes that the compromise set forth herein satisfies these criteria¹. Testa has asserted, among other things, that his transfers of funds to the Debtor are a complete defense

¹ The comments set forth in this motion are for purposes of explaining the benefits of the proposed compromise. They do not constitute admissions by the Trustee, and the Trustee reserves all rights available to the estate if the compromise is not approved.

against claims of fraudulent conveyances and/or preferential transfers, and that the usurious provisions of the one written promissory note were never enforced. While the Trustee disputes these defenses, the prompt recovery of the Settlement Payment, without the costs, delays and uncertainties in continued litigation, is beneficial to the estate.

11. For these reasons, the Trustee believes that the agreement described herein is in the best interests of the estate and should be approved.

WHEREFORE, pursuant to Federal Rule of Bankruptcy Procedure 9019, and for cause shown, the Trustee respectfully prays:

1. That this Court enter an order approving the compromise with Testa, as described herein;
2. That the Trustee be authorized to execute the Stipulation and such documents as are necessary to effectuate this agreement; and
3. For such further relief as this Court deems just and proper.

Respectfully submitted this 6th day of May, 2025.

STEVEN WEISS,
CHAPTER 7 TRUSTEE

By: /s/ Steven Weiss
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CERTIFICATE OF SERVICE

I, Steven Weiss, Esquire, of Shatz, Schwartz and Fentin, P.C., hereby certify that on May 6, 2025, I served a copy of the foregoing Motion for Approval of Compromise via electronic and/or first-class U.S. Mail, postage pre-paid to all creditors and to the parties:

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